

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. I MC 24948 through I MC 24954.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication -- Evidence: Generally -- Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although at common law abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

4. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

5. Notice: Generally -- Regulations: Generally -- Statutes
All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Jim W. Koonce, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jim W. Koonce has appealed the decision of the Idaho State Office, Bureau of Land Management (BLM), dated November 18, 1981, which declared the unpatented Happy Day and Happy Day Nos. 1 through 6 lode mining claims, I MC 24948 through I MC 24954, abandoned and void for failure to file on or before December 30, 1980, evidence of annual assessment work or a notice of intention to hold the claims, as required by 43 CFR 3833.2. The decision returned, unrecorded, the evidence of assessment work performed on the claims in 1981.

Appellant contends the claims have been held by his family since 1935 and that all requirements of the 1872 mining laws have been complied with each year. The 1980 assessment work was performed, but evidence of it was not filed with BLM simply through oversight. There was no intent on his part to abandon the claims, as is shown by the performance of assessment work in excess of \$10,000 in 1981. He has remained in possession of the claims at all times except when prevented by inclement weather in the winter months.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim, or evidence of the performance of annual assessment work on the claim, in the proper BLM office on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations in 43 CFR Subpart 3833. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-48 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Fahey Group Mines, Inc., *supra*; Lynn Keith, *supra*; Thomas F. Byron, 52 IBLA 49 (1981).

[3] Appellant has argued that he had no intention of abandoning the claims. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant did not intend to abandon his claim may not be considered. Lynn Keith, *supra*.

[4] The filings required by section 314 of FLPMA must be made both in the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment in the proper county of a proper recording of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Major G. Atkins, 60 IBLA 284 (1981); Johannes Soyland, 52 IBLA 233 (1981).

[5] BLM was under no obligation to notify appellant of the need for a 1980 filing. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976).

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

